

# GIBSON DUNN

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May 6, 2013

## VIA HAND DELIVERY

The Honorable Robert E. Payne, United States District Judge  
United States District Court  
for the Eastern District of Virginia, Richmond Division  
Spottswood W. Robinson III and  
Robert R. Merhige, Jr., Federal Courthouse  
701 East Broad Street  
Richmond, VA 23219

Re: *ePlus, Inc. v. Lawson Software, Inc.*, Civil Action No. 3:09cv620

Dear Judge Payne:

During post-hearing arguments on April 26, 2013, Your Honor asked Mr. Thomasch whether the contempt hearing record included evidence showing which software configuration particular Lawson Software, Inc. ("Lawson") customers had, and Mr. Thomasch stated that he believed that there was such information in the record, having come in through the remedies case. 4/26/13 Tr. at 29-30. Lawson submits this letter to summarize for the Court's convenience the information in the record on the configurations of particular Lawson customers.

The contempt hearing record contains evidence showing the Lawson customers that had Configuration No. 3 or Configuration No. 5 during the time period from the date of the injunction through November 30, 2012. While the record does not contain a summary list of those customer names, such a summary list can be prepared from the records that are in evidence, and was prepared and agreed to by the parties' respective economic experts. Attached as Exhibit A is a list of 146 customers by name (and with identification numbers and configuration designations) who possess either Configuration No. 3 or Configuration No. 5. This list comprises the customers that each party's economic expert identified using information in Lawson's records. It is our understanding that there is no substantive dispute between the parties as to the identities of the customers who had Configuration No. 3 or Configuration No. 5 as summarized on the attached list.

On Friday, May 3, 2013, Lawson proposed to ePlus that the parties jointly submit this list to your Honor, and further stated that Lawson would submit the list on its own if ePlus did not wish to join. Lawson agreed to wait to send the list to Your Honor until today, to give ePlus

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time to evaluate whether to join in the submission. On Monday, May 6, 2013, ePlus confirmed that it would not join in the submission of this list even though it simply identifies the same customers included on a summary document that ePlus had proposed to submit to the Court during the hearing,<sup>1</sup> reflects the same customer names as determined by each of the parties' experts, and is information already in evidence but presented in a form more convenient for the Court's use. When the undersigned provided a copy of the list to counsel for ePlus, ePlus's counsel did not express any substantive disagreement with the identification of the 146 customers with Configuration No. 3 or Configuration No. 5. Lastly, Lawson notes that ePlus bears the burden of proving that any challenged conduct pertains to a customer with Configuration No. 3 or Configuration No. 5.

The list was derived from the following documents that have been admitted into evidence: PX-1080 (License Revenue May 23, 2011 – November 30, 2011); PX-1081 (Maintenance Revenue May 23, 2011 – November 30, 2011); PX-1241 (License Revenue December 1, 2011 – August 31, 2012); PX-1242 (Maintenance Revenue December 1, 2011 – August 31, 2012); PX-1246 (License Revenue September 1, 2012 – November 30, 2012); PX-1247 (Maintenance Revenue September 1, 2012 – November 30, 2012); and PX-1078 (SKU Chart). These documents together comprise the license and maintenance data for all United States Lawson customers, for all SKUs (not limited to those that make up Configuration Nos. 3 and 5), from at least the date of the injunction to November 30, 2012, and a SKU description chart. They were moved into evidence by ePlus.

This list of customer names – previously agreed to by the parties' respective experts – allows easy identification by name of those customers with Configuration No. 3 or Configuration No. 5. The information on the list can be verified from the documents identified above by using the following steps:

- Filter each financial data sheet to gather all data lines corresponding to the desired customer (filter by customer name ("Customer Name" column) or identification number ("Customer #" column) in each of the above revenue spreadsheets);
- Search all resulting spreadsheet data lines for each of the SKUs identified as corresponding to an "infringing" SKU in PX-1078 (referred to by

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<sup>1</sup> When ePlus made that proposal during the hearing, Lawson did not agree because the summary document that ePlus proposed to move into evidence contained information about particular customers beyond what is provided on Exhibit A, and Lawson had insufficient time to determine its accuracy.

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Dr. Ugone as the “Rosetta Stone,” Tr. 882:22-883:9). These SKUs are located in the “SKU” column;

- Determine which modules the customer has based on which SKUs from the PX-1078 chart appear in the data for that customer’s name/number.

As an example, to determine whether the “City of Boise” has a configuration at issue, for each spreadsheet, the “Customer Name” column should be filtered for “City of Boise.” The SKU column in the resulting lines should then be searched for each of the SKUs identified in PX-1078. If this is performed in all of the spreadsheets, it can be seen that the customer has the following SKUs from PX-1078: LSF (Lawson System Foundation), PFX (Process Flow), FINPRO (Inventory Control/Purchase Order/Requisition + other modules not at issue), RQC (Requisition Center), SIPP (Requisition Center), and EPP (Punchout), but certainly does *not* have EDI, TCS or HBP (which are all SKUs for Electronic Data Interchange – EDI). Thus, the record evidence indicates that City of Boise is a Configuration No. 3 customer. In contrast, a similar search for Western Lake Superior Sanitary (mentioned at Tr. 24:2-21, 545:4-546:6, 587:6-589:12, and 603:19-605:9) reflects that it has the following SKUs from PX-1078: LSF, PROC (Inventory Control/Purchase Order/Requisition), SIPP, and RQC, but does *not* have EPP, EPPH (Punchout), EDI, TCS, or HBP meaning that Western Lake Superior Sanitary is neither a Configuration No. 3 nor a Configuration No. 5 customer. Similarly, a search of the referenced exhibits for Art Crandall & Associates, another company mentioned at trial (at Tr. 16:16-18), would yield no results in any of the referenced exhibits, indicating that it was not a Lawson customer at all during this time period.

Performing such an analysis of the evidence for each customer listed in any of the license or maintenance data spreadsheets would generate a list of 72 Configuration No. 3 customers, and 74 Configuration No. 5 customers.<sup>2</sup> For Your Honor’s convenience, and so the Court does not need to go through these steps where there is no dispute between the parties as to

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<sup>2</sup> Both experts made certain assumptions that impact the categorization of particular customers. For example, both experts assumed that a customer on the original list of 864 RSS/RQC customers from the underlying trial had not only RSS/RQC, but also Inventory Control, Requisition Center, and Purchase Order, regardless of whether revenue for each of those modules was recognized in the data spreadsheets during the relevant time period. The data spreadsheets provided substantially all of the information needed to determine which customers had which configurations; however, in some cases, Lawson provided additional information that was relied upon by both experts without dispute, and the resulting list in Exhibit A is based upon that information. These assumptions serve to increase, rather than decrease, the number of customers deemed to have Configuration No. 3 or Configuration No. 5. Both experts adopted the list of customers in Exhibit A.

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the identity of customers with Configuration No. 3 or Configuration No. 5, Exhibit A summarizes the results of the described process, identifying the set of customers having Configuration Nos. 3 or 5 during the May 23, 2011 – November 30, 2012 period.<sup>3</sup> Without reference to Exhibit A, however, the information about Configuration Nos. 3 and 5 customers may be derived through evidence in the record, as shown above.

Respectfully submitted,



Christopher D. Dusseault

Attachment

cc: Counsel of Record (Via E-mail)

CDD/lcj

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<sup>3</sup> It should be noted that the parties' experts used a different process than the one described here, utilizing sophisticated, computerized data analysis tools. However, the steps described here will yield the same list as produced by the experts' methods.

# **EXHIBIT A**

### Summary of Lawson Customers with Configuration Nos. 3 or 5

Name	Customer ID #	Configuration <sup>(1)</sup>
[1] ADVOCATE HEALTH CARE NETWORK	5040	3
[2] Affiliated Computer Services	72087	5
[3] ALBERT EINSTEIN HEALTHCARE	6206	5
[4] AQUA - PHILADELPHIA SUBURBAN W	3089	3
[5] ARVEST BANK OPERATIONS INC	6183	3
[6] Assurant Solutions	306201	3
[7] Athens Regional Health Systems, Inc.	100011223	5
[8] BANNER HEALTH	5575	5
[9] BARBARA ANN KARMANOS CANCER	6126	5
[10] BAYLOR HEALTH CARE SYSTEM	4614	3
[11] Bermuda Hospitals Board	100008689	5
[12] BEXAR COUNTY	72938	3
[13] Billings Clinic Foundation	72855	5
[14] BLUE CROSS OF IDAHO	6184	3
[15] BOSTON MEDICAL CENTER	4642	3
[16] Cancer Treatment Centers	6863	5
[17] CARETECH SOLUTIONS, INC.	5623	3
[18] Carilion Services, Inc.	4737	3
[19] CARPENTERSVILLE CUSD 300	6110	3
[20] CASH AMERICA INTERNATIONAL	2791	5
[21] CATHOLIC HEALTH INIT - FIN/LBI	5986	5
[22] CENTER FOR THE DISABLED	5727	5
[23] CenterLight Health System	5376	5
[24] CENTRAL DUPAGE HOSPITAL	4364	5
[25] Central Maine Healthcare	100006281	5
[26] CENTURA HEALTH	4423	3
[27] CHEROKEE NATION	6021	3
[28] CHICAGO HOUSING AUTHORITY	6142	3
[29] CHILDREN'S HOSPITAL OF	4923	3
[30] CHILDREN'S MEDICAL CENTER	6102	5
[31] CHILDREN'S MERCY HOSPITAL	73647	5
[32] CHRIST HOSPITAL, THE	6525	5
[33] City Of Boise	73602	3
[34] City of Lees Summit	73578	3
[35] CITY OF LITTLE ROCK, AR	6224	3
[36] CITY OF TOPEKA	6509	3
[37] GLACKAMAS EDUCATION	5466	3
[38] CLARK MEMORIAL HOSPITAL	73598	5
[39] CLEVELAND CLINIC FOUNDATION	4881	3
[40] COMMUNITY MEDICAL CENTERS	6570	5
[41] Consulate Management Company	6211	5
[42] COOK CHILDREN'S HEALTH CARE	72116	5
[43] Cooper Health System	5815	5
[44] County of DuPage	100011670	3



### Summary of Lawson Customers with Configuration Nos. 3 or 5

	Name	Customer ID #	Configuration <sup>[1]</sup>
[45]	COVENANT HEALTHCARE MICHIGAN	73607	5
[46]	DALLAS AREA RAPID TRANSIT-DART	1778	3
[47]	Dameron Hospital	6233	5
[48]	DEACONESS HEALTH SYSTEM - IN	4757	5
[49]	DENVER PUBLIC SCHOOLS-KEY GOVE	3096	3
[50]	DEVRY	4499	3
[51]	EDWARD HEALTH SERVICES CORP	6351	5
[52]	EINSTEIN AND NOAH RESTAURANT	5048	3
[53]	FLB FINANCIAL GROUP INC	6136	3
[54]	FORT BEND COUNTY	6237	3
[55]	Garden City Hospital	4644	5
[56]	Geisinger System Services	5118	3
[57]	GOOD SAMARITAN HOSPITAL-IN	4431	3
[58]	GRANT THORNTON - CHICAGO	4944	3
[59]	GREENVILLE HOSPITAL SYSTEM	888090	5
[60]	GUILFORD COUNTY, NC	6219	3
[61]	H. LEE MOFFITT CANCER CENTER	5458	5
[62]	HCA INFO - COLUMBIA INFORMATIO	5411	5
[63]	HEARTLAND REGIONAL MEDICAL	6496	5
[64]	Hurley Medical Center, Inc.	4375	5
[65]	INDIANA UNIVERSITY HEALTH, INC	4887	5
[66]	INTER-AMERICAN DEVELOPMENT	5564	3
[67]	ITK Technologies LLC	73865	5
[68]	JACKSON HEALTH SYSTEM	6854	5
[69]	JACKSON LABORATORY	4843	3
[70]	JACKSON NATIONAL LIFE	4085	3
[71]	Kennedy Krieger Institute	6667	3
[72]	Kinder Morgan Inc.	5354	3
[73]	LEGACY HEALTH	5863	5
[74]	LHC Group, Inc.	72115	5
[75]	LOYOLA UNIVERSITY MEDICAL	5388	3
[76]	Madison Metropolitan School	6045	3
[77]	MAGELLAN HEALTH SERVICES, INC.	5543	3
[78]	MAINE MEDICAL CENTER	4769	5
[79]	MARSHFIELD CLINIC	2088	5
[80]	MARTIN MEMORIAL MEDICAL CENTER	73583	5
[81]	MAYO FOUNDATION FOR MEDICAL	4787	3
[82]	Memorial Health System - Is	6053	5
[83]	MEMORIAL HEALTHCARE SYSTEM	4374	3
[84]	MEMORIAL HERMANN HEALTHCARE	4761	3
[85]	MERITER HOSPITAL INC	6188	5
[86]	METHODIST HOSPITALS	888070	5
[87]	METRO HEALTH SYSTEM THE	4231	3
[88]	MOSES H CONE MEMORIAL HOSPITAL	4766	5
[89]	MUNROE REGIONAL HEALTH SYSTEM	6081	5

### Summary of Lawson Customers with Configuration Nos. 3 or 5

Name	Customer ID #	Configuration <sup>(1)</sup>
[90] Nationwide Children's Hospital	6678	5
[91] NEW BREED INC	6194	3
[92] NEW YORK & PRESBYTERIAN HOSPIT	4763	3
[93] No Description	5747	3
[94] No Description	562301	5
[95] NORTH CENTRAL TEXAS COUNCIL OF	6134	3
[96] North East Independent School District	73001	3
[97] North Kansas City Hospital	888085	5
[98] Northbay Healthcare	2851	5
[99] NORTHERN COLORADO WATER CONS	71947	3
[100] ORLANDO HEALTH INC	5588	5
[101] Pasadena Independent School District	6131	3
[102] PEACEHEALTH OREGON REGION	6681	5
[103] Pharmaceutical Product Develop	2879	3
[104] PREMIER HEALTH PARTNERS	6594	5
[105] PRESBYTERIAN HEALTHCARE SERVIC	6198	5
[106] PRINCETON HEALTHCARE SYSTEM	4957	5
[107] Racine United School District	617801	3
[108] Rent-A-Center, Inc.	4886	3
[109] RIVERSIDE HEALTHCARE SYSTEM	4906	3
[110] ROSEWELL PARK CANCER INSTITUTE	888012	3
[111] SAN ANTONIO WATER SYSTEM	6236	3
[112] School District of Greenville County	6744	3
[113] SCHOOL DISTRICT OF HILLSBOROUG	5633	5
[114] SCRIPPS CLINIC	5132	3
[115] Seattle Children's Hospital Medical Ctr	6080	5
[116] SHARP HEALTHCARE - SAN DIEGO H	5260	3
[117] SHORE HEALTH SYSTEM	5944	5
[118] SHRINERS HOSPITAL FOR THE CHIL	6352	5
[119] SISTERS OF MERCY HEALTH SYSTEM	6073	5
[120] SOUTHWEST GENERAL HEALTH CENTE	6119	5
[121] SPECTRUM HEALTH SYSTEM	4988	3
[122] ST. JUDE CHILDREN'S RESEARCH	5984	5
[123] STANFORD UNIVERSITY HOSPITAL	888089	5
[124] STATE OF NEW HAMPSHIRE	6232	5
[125] Stewart Information Service Co	71967	3
[126] STONY BROOK UNIV. HOSPITAL	4734	3
[127] SUTTER HEALTH	4468	3
[128] TACOMA SCHOOL DISTRICT NO.10	6444	3
[129] Taylor Corporation	2245	3
[130] TRINITY INFORMATION SERVICES	5999	5
[131] TUCSON UNIFIED SCHOOL DISTRICT	72149	3
[132] U.S. HEALTHWORKS, INC.	73547	5
[133] United Supermarkets, Llc -Tx	2267	3
[134] UNIVERSITY OF COLORADO	6082	5



### Summary of Lawson Customers with Configuration Nos. 3 or 5

Name	Customer ID #	Configuration <sup>[1]</sup>
[135] University Of Mississippi	888095	5
[136] University of Tennessee Medical Center	4922	5
[137] UNIVERSITY OF TEXAS M.D.-UT MD	5424	3
[138] University Of Toledo, The	4902	5
[139] UNIVERSITY PHYSICIANS HOSPITAL	6371	5
[140] USC CARE MEDICAL GROUP	6749	5
[141] VANGUARD HEALTH SYSTEMS	73648	3
[142] VIRGINIA COMMONWEALTH - VCU	6246	5
[143] VIRGINIA HOUSING DEVELOPMENT	72138	3
[144] VOLUME SERVICES	4307	5
[145] WJ Schools Consortium	6178	3
[146] Yale New Haven Health System	5073	5

Notes and sources:

[1] Indicates the customer's configuration

[2] Note: not all customers listed had Configuration Nos. 3 or 5 for the entire data period